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IN THE

Supreme Court of the United States

October Term, 195

No. [redacted] 128

A. J. OSTHEIMER, 3RD, RUTH M. OSTHEIMER,
Petitioners

v.

THE UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Alfred J. Ostheimer, 3rd, and Ruth M. Ostheimer petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered March 9, 1959, affirming the decision of the United States District Court for the Eastern District of Pennsylvania.

CITATIONS TO OPINIONS BELOW

The memorandum opinion of the District Court, printed in Appendix A hereto, p. 10, is reported in 160 F. Supp. 669.

The opinion of the Court of Appeals, printed in Appendix B hereto, p. 12, is reported in 264 F. 2d 789.

JURISDICTION

The judgment of the Court of Appeals was entered on March 9, 1959. A Petition for Rehearing was timely filed on March 24, 1959, and was denied on March 31, 1959. The jurisdiction of this Court is invoked under Section 1254(1) of the Judicial Code, 28 U. S. C. Section 1254(1) (1952).

QUESTIONS PRESENTED

1. Does a life insurance broker who pays premiums on policies of life insurance which he purchased for himself realize taxable income in an amount equal to the contractual commissions on such premiums which are returned to him by the insurance company?

2. Does a life insurance broker who pays premiums on policies of life insurance which he purchased for his children realize taxable income in an amount equal to the contractual commissions on such premiums which are returned to him by the insurance company?

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The question presented involves the meaning of "income" in the Sixteenth Amendment to the Constitution of the United States, as applied through Section 22(a) of the Internal Revenue Code of 1939, 26 U. S. C. Section 22(a) (1952).

Sixteenth Amendment:

> "The Congress shall have power to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States, and without regard to any census or enumeration."

Section 22(a):

> " 'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any poltitical subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. . . ."

STATEMENT

Suit was filed in the United States District Court for the Eastern District of Pennsylvania for a refund of income taxes, and interest thereon, paid for the years 1947, 1948

and 1949.[1] The jurisdiction of the District Court was invoked under Section 1346(a)(1) of the Judicial Code, 28 U. S. C. Section 1346(a)(1) (1952).

During the years 1947, 1948 and 1949, A. J. Ostheimer, 3rd (hereinafter called the "taxpayer") was, and has continued to be, a life insurance broker, licensed in Pennsylvania and other states. The taxpayer conducted a sole proprietorship in Philadelphia, Pennsylvania, except during the first seven months of 1947 when he conducted business in a partnership.

The taxpayer purchased and was the owner of policies of insurance on the lives of his partner and three key employees. The taxpayer also purchased policies of insurance on the lives of four of his children. He gave these policies to the children, who were thereby made the owners. All but one of the policies were issued by the Northwestern Mutual Life Insurance Company (hereinafter called "Northwestern"). The remaining policy was issued by Aetna Life Insurance Company (hereinafter called "Aetna").

The taxpayer paid standard gross premiums on these policies. The insurance companies returned to the taxpayer amounts equal to the contractual commissions on the gross premiums.

The taxpayer did not include the amounts so returned to him by the insurance companies in his taxable income for the years in question. The Revenue Officials later added these amounts to the taxpayer's income and collected the resulting tax. The present suit for refund was thereafter duly commenced.

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[1] The exact sum of income taxes and interest paid on the amounts here in issue has not been determined. The amounts of alleged income here in issue are: 1947—$517.89; 1948—$328.85; 1949—$1,022.04. (R. Appendix, p. 42a.) It has been stipulated that if appellants are entitled to refund, the net refund will be determined as agreed upon by the parties, and that if the parties are unable to agree, the matter will be submitted for determination by the district court. (R. Appendix, p. 8a.)

The taxpayer here was an authorized representative in Pennsylvania for nine insurance companies other than Northwestern and Aetna. Neither Northwestern nor its General Agent in Philadelphia prescribed rules governing the development of the taxpayer's clientele. The taxpayer could go and come as he pleased. He was not required to spend a fixed amount of time for Northwestern. (R. Appendix p. 53a). He was obligated to give Northwestern a right of first refusal on policies of the type written by Northwestern. (R. Appendix pp. 61a-63a). Applying the common-law rules than prescribed by the Social Security Act for determining employer-employee relationship, the Chief Counsel of the Bureau of Internal Revenue held, in 1937, that a Special Agent of Northwestern, like the taxpayer, was not an employee but an independent contractor. (R. Appendix p. 33a).

REASONS FOR GRANTING THE WRIT

1. *The case presents a constitutional question of far-reaching importance in the administration of the Federal income tax.*

We believe that the basic issue is whether the comparative economic advantage which a person is able to obtain as an incident inherent in his particular calling constitutes taxable income. In the case at bar, the taxpayer happens to be an insurance broker. As an incident to that calling, the out-of-pocket costs for insurance he himself buys and pays for will be less than the costs of corresponding policies to a person who is not in the insurance business.

Illustrations of everyday transactions where a comparative economic advantage is obtainable simply as an incident of a person's own occupation are virtually limitless. An example is found in the legal profession. A frequent and well-known practice among law firms is to give a law associate a fixed percentage of any fee paid to the law firm by a

personal client of the associate. As an example, let us assume that a young attorney associated with a law firm is himself injured in an automobile accident. He turns his claim over to the firm's litigation specialists who obtain a $12,000 judgment. The firm's fee for its services in a negligence case of this type is 30% of the judgment, or $3,600. As in the case of one of his personal clients, the associate is entitled to receive one-third of the gross fee, $1,200, for "bringing in" the case—his own case—to the office. The firm, following its normal accounting procedures, collects its $3,600 fee from the associate and gives him one-third of what he paid in, or $1,200, at the end of the next accounting period.

If the Court of Appeals' decision in the instant case is correct, it seems clear that our young attorney would have $1,200 of taxable income despite the fact that the generating source of the whole fee of $3,600 was money paid into the firm by the young attorney himself.

The law associate who brings his own case to his law firm, the real estate broker who buys a home for himself and family, the stockbroker who buys or sells securities as part of his own investment program, the insurance broker who pays premiums for his own purposes—each is able to consummate his own transaction at lower out-of-pocket costs than would a member of the general public. It is the taxpayer's position that the comparative economic advantage to each is simply the normal, commonplace advantage that a person in a particular occupation has over a person in a different occupation. Whether we call it "an inherent incident of one's occupation," or "getting it wholesale," the net effect is the same—a lower out-of-pocket cost. We submit that this net effect is a true reduction in cost—*not* taxable income.[2] One does not produce taxable income by "selling something to himself."

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[2] The issue here is not to be confused with the question of the taxability of an employee's bargain purchase or an employee's discount. Beyond the fact that the insurance broker in the instant case

In recent months, the basic issue involved here has been litigated in two other cases. Because of the widespread impact of the issue, it is not unreasonable to expect further litigation.

These recent decisions create a sharp division of opinion. In *Sol Minzer*, 31 T. C. No. 115, the Tax Court, by a 10-6 vote, reached a conclusion directly contrary to that of the Court of Appeals in the instant case. The *Minzer* decision was handed down only four days after the opinion of the Court of Appeals here. Similarly, in *Kenneth W. Daehler*, 31 T. C. No. 73 (Jan. 12, 1959), the Tax Court held, by a 10-5 vote, that a real estate broker was not taxable on the amount equal to the "commission" on the sale of property he purchased for his own use.

For the foregoing reasons, we respectfully urge that it would be in the public interest for this Court to settle the issue at this time and, in so doing, forestall what would seem to be an almost inevitable flood of litigation in a matter of nationwide importance.

2. *The decision of the court below conflicts in principle with the decision of the Court of Appeals for the Second Circuit in Benjamin v. Hoey, 139 F. 2d 945 (1944).*

In *Benjamin*, the taxpayer, a 38% partner in a stock brokerage firm, purchased and sold securities through the firm for his personal account and paid to the partnership the full, usual commissions on each transaction. The Court of Appeals held that the taxpayer's percentage of the commissions was not taxable income to him.

> "Because he had partners, he paid out an amount equal to 62% of the commissions. The balance, 38%,

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is not an employee, an employer, in the standard case of an employee discount, retains less than he would from a sale of a similar item to the general public. In the instant case, the insurance company retained every last dollar from the premium paid by the insurance agent that it ever expected to retain in insuring any other person who presented the same actuarial risk.

or $25,439.91, always remained his. To put it differently, that sum he paid to himself, and what one pays to oneself cannot be part of one's income." 139 F. 2d 2d at 946.

The court below expressed the view that the *Benjamin* case could be distinguished on the ground that the taxpayer there was a member of a partnership and had thus, in a sense, paid the money "to himself." But the underlying factors in *Benjamin* are equally applicable to the instant case. In both cases, the taxpayer knew before the transaction commenced that he was entitled to the return of a specific percentage of amounts which he originally paid out in full from his own pocket for his own purposes. Each was able to obtain this economic advantage simply because of his particular occupation.

We cannot perceive any purpose or policy which, at the constitutional level, permits one tax result for the stockbroker and a different one for the insurance broker. We submit that such distinctions as there are between the two brokers lack relevance to the constitutional issue and that there is thus a basic conflict between the Second Circuit and the Third Circuit in the application of the Constitution. We can indeed be sure that neither the stockbroker nor the insurance broker will ever comprehend why the one should be treated differently from the other.

3. *The implication of the decision below conflicts with the applicable decisions of this Court, in that the court below relied upon state law in determining the concept of "income" under the Constitution.*

The court below made pointed reference to a Pennsylvania statute which prohibits "rebates" on insurance premiums. It reasoned that since the lower cost incurred by the taxpayer could not legally be the result of a "rebate"

under state law, the economic benefit must be taxable income under the United States Constitution.[3]

It is axiomatic that state law cannot control the operation of a Federal income tax statute unless the Federal statute itself clearly permits such control. It is the "will of Congress . . . to give a uniform application to a nationwide scheme of taxation."[4] *A fortiori*, a constitutional issue as to the meaning of "income" cannot be made to depend upon the langauge used by a state legislature.

Moreover, whether a state statute permits a "rebate" to an insurance broker on his personal premium payments or simply permits the "usual commission" thereon, the broker has the identical comparative economic advantage over a member of the general public. In either case, the application of the United States Constitution to the issue presented here must remain the same. We, accordingly, submit that reference to the terminology of state insurance laws really begs the issue of Federal taxation under the Sixteenth Amendment.

Conclusion

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted.

MERVIN M. WILF,
BERNARD V. LENTZ,
HERBERT W. REISNER,
Counsel for Petitioners

Dated: June 15, 1959

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[3] 264 F. 2d at 792, Appendix B, at pp. 16-17.

[4] Burnet v. Harmel, 287 U. S. 103, 110, 53 S. Ct. 74, 77 (1932).

Appendix "A"

OPINION OF THE DISTRICT COURT

Kirkpatrick, *Chief Judge:*

The plaintiff, a life insurance agent authorized to act as special agent for the Northwestern Mutual Life Insurance Company and to solicit for the Aetna Life Insurance Company, procured policies with Northwestern on the lives of his former partner, three key employees and his children, as well as one with Aetna on the life of his former partner. He brings this suit to recover the additional tax paid because of the inclusion in his income, by the revenue officials, of the commissions he received from the insurance companies by reason of the issuance of these policies. He contends that these commissions were not income to him but were, in effect, a reduction of the price of the policies.

I cannot agree. The Internal Revenue Department ruled in 1915 (T. D. 2137, 17 Treasury Decisions 48) that "A commission retained by a life insurance agent on his own life insurance policy is held to be income accruing to the agent, and should be included in his return of income for the assessment of the income tax." This ruling was reaffirmed in 1932 and again in 1955. Obviously, the ruling would be the same as to commissions on policies on the lives of an agent's children, his employees and his business partner.

An administrative interpretation such as this, so consistently followed over such a long period of time, is entitled to great weight with the Court and there is a heavy burden upon the plaintiff to show that it is erroneous. The insurance company, in fact, pays its agent for procuring policies and the premiums thereon. This is what the plaintiff did. It is true that because the policies were upon the lives of his partner, his employees and members of his

family, he did not have to perform some of the duties that he would have performed if they had been upon the lives of strangers, but this in no way affects the status of the money he received. In fact, it would be a violation of the law for an insurance company to have sold insurance to him at a lower rate than that charged other policyholders.

Judgment may be entered for the defendant.

The requests for findings of fact and conclusions of law submitted by the defendant are all affirmed.

Appendix "B"

OPINION OF THE COURT OF APPEALS FOR THE THIRD CIRCUIT

By KALODNER, Circuit Judge:

Are commissions received by a life insurance agent on premiums which he paid on policies he had placed on the lives of his partner, key employees and children, "gross income" under Section 22(a) of the Internal Revenue Code of 1939? [1]

That is the single question presented by this appeal from the judgment of the District Court [2] which answered it affirmatively, in rejection of the contention that the commissions were merely a reduction of the cost of the policies.

The facts, critical to this appeal, may be summarized as follows:

During 1947, 1948, and 1949, the tax years here involved, A. J. Ostheimer, 3rd ("taxpayer") [3] conducted a business as a life insurance agent. During the first seven months of 1947, the business was conducted in partnership with one Earl Zebley, and thereafter as a sole proprietorship.

Taxpayer, during the years stated, was licensed to act as a life insurance agent in Pennsylvania for eleven life insurance companies. Among them were the Northwestern Mutual Life Insurance Company of Milwaukee, Wisconsin ("Northwestern"), of which he was a "Special Agent", and the Aetna Life Insurance Company ("Aetna").

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[1] 26 U. S. C. 1952 ed., Sec. 22.

[2] The opinion of the District Court is reported at E. D. Pa. 1958, 160 F. Supp. 669.

[3] Since a joint tax return was filed by taxpayer and his wife, Ruth M. Ostheimer, she is a party plaintiff.

Under his contracts with these insurance companies, the taxpayer was to receive commission on all life insurance business he wrote for them. By the contracts, as well as by Pennsylvania statutes,[4] the companies and their agents were required to sell insurance at fixed prices without rebate of premiums or commissions.

During the taxable years involved, taxpayer was the owner and beneficiary of life insurance policies which he had purchased on the lives of his business partner, Zebley, and three of his key employees. Four of his children also owned policies issued on their lives which were purchased by taxpayer and given to them. All but one of the policies were issued by Northwestern, the remaining one was issued by Aetna.

Taxpayer personally, and through his secretary, prepared the applications for the policies on which he was designated as agent. From the dates of their issuance, including the taxable years involved, he paid the standard premiums on all the policies, by checks drawn on his personal bank account. The policies and premium payments were processed by the general agents of Northwestern and Aetna in the same manner as other policies and premiums. The general agents periodically submitted "Commission Statements" to taxpayer and these statements covered all amounts due him from time to time, and were accompanied by checks for the total amount then due, including among others the regular commissions on the policies here involved.

Taxpayer was a "Special Agent" of Northwestern and an "authorized agent" for Aetna. As "Special Agent" taxpayer was not required to spend a fixed amount of time

[4] The Act of May 17, 1921, P. L. 789, Art. VI, §§635-636, 40 P. S. §§275-276 (Purdon 1954) provides that an insurance agent may not rebate any part of an insurance premium or his commission thereon; the Act of May 17, 1921, P. L. 682, Art. III, Sec. 346, 40 P. S. Sec. 471 (Purdon 1954) provides that insurance companies are prohibited from offering or making rebates on insurance premiums.

for Northwestern. He was obligated to give Northwestern a right of first refusal on policies of the type issued by it. His ageney contract specifically provided that it did not create an employer-employee relationship.

Taxpayer (and his wife) did not include in their gross income on their tax returns any of the amounts equal to contractual commissions on the policies involved. It may be noted, parenthetically, that taxpayer deducted as necessary and ordinary business expenses the nominal expenses incident to the policies agreed to be in the amount of $5.00 per annum.

The Commissioner determined that the commissions received by taxpayer on these policies should properly have been included in the taxable years at issue and accordingly assessed deficiencies. The District Court, as stated, sustained the Commissioner's determination.

Here, as below, taxpayer urges that his commissions merely effectuated a reduction of his cost in purchasing and maintaining the policies and consequently did not constitute "income". He says he merely acted as his own middleman and thereby obtained the middleman's benefit, viz., the commissions, enabling him to obtain the insurance "at a net price" or "wholesale".

Otherwise stated, taxpayer's contention is that the commissions he received on the premiums he paid were simply his "discount", and "discount" he says, is not income.

In reply, the government contends (1) the facts do not establish a bargain purchase of insurance since taxpayer paid the gross price required by law to be charged all insurance purchasers; and (2) even if a bargain purchase could be established by viewing the commissions as a reduction of purchase price, taxpayer secured a benefit by virtue of his employment relationship, not otherwise available to the public, which is clearly taxable as income.

We are in agreement with the government's view that the facts do not establish a bargain purchase so that consideration of its second contention is unnecessary.

We are further of the opinion that the commissions received by taxpayer on the policies here involved are well within the definition of "gross income" as stated in Section 22(a) of the Internal Revenue Code of 1939, and the specific language of Section 29.22(a)-2 Treasury Regulations 111 and Treasury rulings later discussed.

"Gross income", under the "General Definition" in Section 22(a), "includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales * * * and income derived from any source whatever".

The Treasury Regulations cited, under the caption "Compensation for Personal Services" provide:

> "Commissions paid salesmen, compensation for services on the basis of a percentage of profits, *commissions on insurance* * * * are income to the recipients * * *" (emphasis supplied).

Applicable to the instant appeal are these well-settled principles:

> "* * * in defining 'gross income' as broadly as it did in §22(a) Congress intended to 'tax all gains except those specifically exempted' ".[5]

> "The broad sweep of this language [Section 22(a)] indicates the purpose of Congress to use the *full measure of its taxing power* within those definable categories * * * Hence our construction of the statute should be consonant with that purpose. Technical considerations * * * or the legal paraphernalia which in-

[5] Commissioner of Internal Revenue v. Lo Bue, 1956, 351 U. S. 243, 246, 76 S. Ct. 800, 803, 100 L. Ed. 1142, rehearing denied 352 U. S. 859, 77 S. Ct. 21, 1 L. Ed. 2d 69, citing Commissioner of Internal Revenue v. Glenshaw Glass Co., 348 U. S. 426, 429-430, 75 S. Ct. 473, 99 L. Ed. 483, rehearing denied 349 U. S. 925, 75 S. Ct. 657, 99 L. Ed. 1256.

ventive genius may construct * * * should not obscure the basic issue." [6] (emphasis supplied)

"Where the payment is in return for services rendered * * *," such payment is gross income under Section 22(a).[7]

In the instant case the life insurance companies paid taxpayer commissions on the premiums as compensation for his services in placing the policies involved. The payments were in discharge of the contractual obligation of the insurance companies to pay taxpayer commissions on all premiums paid on policies which he wrote. In other words, the commissions were a "payment in return for services rendered", and as such constituted "gross income".

The payments were not "rebates" to taxpayer by the insurance companies, because, as earlier pointed out, Pennsylvania statutes prohibit the companies from making rebates on insurance premiums. The insurance companies were required by Pennsylvania statute to sell insurance to the public at fixed or uniform rates and taxpayer as a licensed insurance agent was likewise required by statute and by contract to sell at the fixed rates and not to rebate his commission.

Taxpayer, as required by Pennsylvania law and the provisions of the policies, paid the gross premiums on the policies to the insurance companies, and in usual course in accordance with his agency contracts, received the standard commissions on the premiums. Had taxpayer not been the agent who placed the policies he would not, and could not, have received the commissions on the premiums. It was

[6] Hevering v. Clifford, 1940, 309 U. S. 331, 334, 60 S. Ct. 554, 556, 84 L. Ed. 788. See also Commissioner of Internal Revenue v. Glenshaw Glass Co., note 5 supra.

[7] Robertson v. United States, 1952, 343 U. S. 711, 714, 72 S. Ct. 994, 996, 96 L. Ed. 1237; Teleservice Co. of Wyoming Valley v. Commissioner, 3 Cir., 1958, 254 F. 2d 105, 112, certiorari denied 1958, 357 U. S. 919, 78 S. Ct. 1360, 2 L. Ed. 1364.

only in his capacity as agent that he was paid these commissions.

The mere circumstance that taxpayer paid the premiums out of his own funds had no bearing on the nature of the commissions received by him on these premiums.

The circumstance that the commissions operated to reduce the out-of-pocket premium outlays could not operate to make the policy purchases and maintenance "discount" transactions.

In its dealings with taxpayer the insurance companies dealt with him solely as an agent and not as a "customer" or "middleman". Neither as "customer" or "middleman" could they have given him a "discount" because such a "discount" would have been a proscribed "rebate".

The cases cited by taxpayer are inapposite. Take for example, Benjamin v. Hoey, 2 Cir., 1944, 139 F. 2d 945. There the taxpayer was a 38% partner in a stock brokerage firm. He purchased and sold securities through the firm for his personal account and paid to it the usual brokerage commissions on his transactions. Both the District Court [8] and the Court of Appeals held that the taxpayer's share of his own commissions was not taxable income. The holding was premised on the fact that "what one pays to one's self cannot be part of one's income." 139 F. 2d at page 946. With respect to the holding in the Benjamin case it need only be said that it is distinguishable on its facts. There the taxpayer paid his share of the commissions to himself while in the instant case he paid the premiums not to himself but to the insurance companies. Here, taxpayer and the insurance companies were separate entities. There was no partnership relationship between them, only a contractual principal-agent relationship.

Taxpayer has called our attention to Kenneth W. Daehler, 31 T. C. —. There it was held (five judges dissenting) that the amount refunded to a real estate salesman

[8] Reported at S.D.N.Y. 1942, 47 F. Supp. 158.

by his employer as salesman's share of commission on a house the salesman himself bought constitutes a reduction of the price paid for the house rather than taxable income. With respect to this case we need but say that we do not subscribe to its holding. As the dissenting judges pointed out, the salesman's commission was "an employee's commission paid to him for personal services rendered by him to such [his] employer" and, "This compensation for services rendered, definitely constituted gross income under Section 22(a) of the 1939 Code."

There remains only this to be said.

The District Court in its opinion, 160 F. Supp. 669 stated:

> "The Internal Revenue Department ruled in 1915 (T. D. 2137, 17 Treasury Decisions 48) that 'A commission retained by a life insurance agent on his own life insurance policy is held to be income accruing to the agent, and should be included in his return of income for the assessment of the income tax.' This ruling was reaffirmed in 1932[9] and again in 1955.[10] Obviously, the ruling would be the same as to commissions on policies on the lives of an agent's children, his employees and his business partner.
>
> "An administrative interpretation such as this, so consistently followed over such a long period of time, is entitled to great weight with the Court and there is a heavy burden upon the plaintiff to show that it is erroneous."

We subscribe to the District Court's statement.

Administrative interpretations are of great persua-

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[9] G. C. M. 10486, XI-1 Cum. Bull. 14 (1932).

[10] Rev. Rul. 55-273, 1955-1 Cum. Bull. 221.

sion in deciding an issue of statutory construction. See Saunders v. Commissioner, 3 Cir., 1954, 215 F. 2d 768.

Taxpayer contends that he was an independent contractor.

As to this contention it need only be said that the contracts between taxpayer and the insurance companies are forms of employment. The record discloses in fact that Northwestern paid social security taxes with respect to taxpayer's services.

Independent of what has been said, taxpayer certainly had no possible basis for his contention that he was acting as "middleman" with respect to the premiums paid on the policies owned by his children. The premium payments which he made on his children's policies were "gifts" to the children, nothing more, nothing less. The fact that his commissions operated to reduce the cost of his gifts did not change the character of the commissions as compensation to him for his services as agent.

For the reasons stated the judgment of the District Court will be affirmed.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

Attest:

IDA O. CRESKOFF
Clerk

March 9, 1959